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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,617	02/06/2004	Paul L. Hickman	13915.74.1.4	7761
22913 7590 04/24/2008 WORKMAN NYDEGGER 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111				
EXAMINER				
RICHMAN, GLENNE				
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3764				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,617

Applicant(s)

HICKMAN, PAUL L.

Examiner

/Glenn Richman/

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date 3/14/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houston in view of Dyer et al.

Houston discloses a frame fig.1; a housing coupled to and at least partially surrounding said frame 10; a user engagement mechanism coupled to said frame for relative movement with respect thereto 22, a resistance varying mechanism coupled between said frame and associated with said user engagement mechanism abstract, said resistance varying mechanism being operative to cause a change of an exertion by a user engaged with the user engagement mechanism during an exercise session abstract; control circuitry electrically coupled to said resistance varying mechanism fig. 1, said control circuitry having an input 29; and a storage device storing control signals claim 8, and the voice of a virtual personal trainer, wherein said control signals and said voice of a virtual personal trainer are interrelated col. 5, lines 9 – et seq., said digital storage device being coupled to said input of said control circuitry whereby said exercise apparatus can be operated within an exercise session by varying a resistance of said user engagement mechanism in accordance with said control signals with the accompaniment of said voice of said virtual personal trainer abstract.

Houston does not disclose the exercise session comprising use of a plurality of exercise apparatuses.

Dyer et al disclose the exercise session comprising use of a plurality of exercise apparatuses col. 3, lines 11 - et seq.

It would have been obvious to use Dyer et al's plurality of apparatuses with Houston, as it is well known in the art as taught by Dyer et al, for provide multiple exercises for a user.

Dyer et al further disclose and said voice of said virtual personal trainer of said exercise apparatus being adapted to provide instructions regarding use of said plurality of exercise apparatuses during the exercise session col. 8, lines 60 – et seq.

As for claims 2 and 3, Houston further discloses said digital storage device is at least one of coupled to said frame fig. 1, coupled to said housing, and at least partially surrounded by said housing fig. 1.

Houston does not disclose input to said control circuitry includes an input port, and wherein said digital storage device is coupled to said input port by a cable, however, it is well known in the art, to transmit data via a cable and would have been obvious in view of Houston's control system.

As for claim 4, Houston discloses a microprocessor claim 16.

Houston does not specifically disclose said digital storage device comprises at least one of a CD optical digital storage, other forms of optical digital storage, a hard disk magnetic digital storage, other forms of magnetic digital storage, RAM semiconductor digital memory, and other forms of semiconductor digital memory.

Dyer et al disclose said digital storage device comprises at least one of a CD optical digital storage, other forms of optical digital storage, a hard disk magnetic digital storage, other forms of magnetic digital storage, RAM semiconductor digital memory, and other forms of semiconductor digital memory col. 12, lines 54 – et seq.

It would have been obvious to use Dyer et al's storage device with Houston, as it is well known as taught by Dyer et al, to use a digital storage device, for storing control signals of an operating system.

As for claim 5, Dyer further discloses said resistance varying mechanism includes at least one of a brake and a motor 64, and further comprising an output port coupled to at least one of said control circuitry and said input port, which provides audio output signals of at least said voice of said virtual personal trainer col. 11, lines 47 – et seq.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8, 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dyer et al.

Dyer et al disclose a user engagement mechanism including at least one of a pedal, a step, a graspable member, and a planar surface fig. 1; an exertion varying mechanism 64 coupled to said user engagement mechanism, said exertion varying

mechanism being operative to cause a change of an exertion by a user engaged with the user engagement mechanism during an exercise session abstract; and circuitry electrically coupled to said exertion varying mechanism and being operationally receptive to control signals which are provided in correlation with a voice of a virtual personal trainer col. 12, lines 40 – et seq., wherein both said control signals and said voice of a virtual personal trainer are, at least at some point in time, stored together in a digital storage medium col. 12, lines 40 – et seq., whereby said exercise apparatus can be operated within an exercise session with the capability of both varying an exertion of said user and contemporaneously providing said voice of a virtual personal trainer col. 12, lines 40 – et seq., the exercise session comprising use of a plurality of exercise apparatuses col. 3, lines 11 - et seq, and said voice of a virtual personal trainer of said exercise apparatus being capable of providing instructions regarding use of said plurality of exercise apparatuses during the exercise session col. 8, lines 60 – et seq, said digital storage medium associated with digital device can derive said control signals and said voice of said virtual personal trainer from said digital storage medium col. 12, lines 40 – et seq., said digital storage medium is selected from the group consisting essentially of magnetic media, optical media, and semiconductor media col. 12, lines 40 – et seq., said circuitry receives said control signals from a server which communicates over a network fig. 5,

Claims 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer et al in view of Mertesdorf.

Dyer does not disclose said optical media is a compact disc (CD).

Mertesdorf discloses compact disc (CD).

It would have been obvious to use Mertesdorf's CD with Dyer et al's media storage, as it is well known as taught by Mertesdorf, to use a CD, for storing audible feedback in an exercise system.

Response to Arguments

Applicant's arguments with respect to claims 1 and 2 have been considered but are moot in view of the new ground(s) of rejection.

As to claims 6-8 and 10-20:

1. Dyer neither suggests nor describes an exercise apparatus that is responsive to control signals and which provides the voice of a virtual personal trainer relating not only to the use of that specific exercise apparatus, but which also provides instructions regarding the use of other exercise apparatuses during an exercise session as recited in claims 6 and 15.

As to 1 above, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., responsive to control signals) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

2. While Dyer does disclose "control signals" generated by the exercise station's CPU and a "voice generator" for generating "voice data," there does not appear to be

any suggestion or description of an "exercise session comprising use of a plurality of exercise apparatuses, and said voice of a virtual personal trainer of said exercise apparatus being capable of providing instructions regarding use of said plurality of exercise apparatuses"

As to 2 above, Dyer discloses a plurality of exercise apparatuses col. 3, lines 11 - et seq and as applicant discloses in current remarks "for each of the individual exercise devices." Page 11, and voice of a virtual personal trainer providing instructions col. 8, lines 60- et seq.

3. Additionally, Dyer does not teach or suggest "an external device" as recited in claim 15 which includes "digital storage provided separately from said exercise apparatus and operative to at least temporarily store said control signals and said voice of said virtual personal trainer together in said digital storage."

As to 3 above, Dyer discloses "The computer 150 is electrically connected to a modem 152 through which data and information are communicated between the computer 150 and other devices such as outside computers (not shown) via telephone communication systems. This connection feature permits control of the computer 150 from the outside computer for updating control and operational data and information such as news and educational information in the computer 150. Of course, this connection feature also permits remote access via the outside computer to user information which can be transferred to central controllers of other exercise systems corresponding to the one controlled by computer 150." It is inherent that Dyer's external device since it is a computer is operative, as claimed to "operative to at least

temporarily store said control signals and said voice of said virtual personal trainer together in said digital storage".

4. Dyer fails to teach or suggest: circuitry receiving control signals from a server over a network (claim 10) col.10, lines 51-63; a server accessed using Internet protocols (claim 11) col.10, lines 51-63; a digital storage medium separate from the exercise device and coupled to the device by a transmission medium (claim 12) col.10, lines 51-63; or the external device including a digital processor (claim 16) col.10, lines 51-63.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764